To the Honorable, the Justices of the Supreme Court of the United States.

Peter Hagan and Edward F. Martin petition for a writ of *certiorari*, directed to the United States Circuit Court of Appeals for the Third Circuit, to bring before this Honorable Court the cause of the Scottish Union & National Insurance Company, respondent-appellant, versus Peter Hagan and Edward F. Martin, libellants-appellees.

Your petitioners respectfully allege and verify:

That the Scottish Union and National Insurance Company issued a policy insuring "Peter Hagan & Company *for account of whom it may concern* for the term of one year from the nineteenth day of November 1897, against loss or damage by fire, of the iron tug "Senator Penrose."

That at the time said policy was issued, said tug was owned solely by Peter Hagan, and that the latter, on June 14, 1898, sold a half interest therein to Edward F. Martin, the other petitioner. It was agreed as one of the terms of the purchase of this half interest, that the said Martin should have the benefit of the foregoing policy, and of the other policies upon the tug, then in existence. No assignment of this policy was made to Martin, nor was notice given to the company of the transfer of the interest. The attention of the broker, who had procured the policies upon the tug, was called to the transfer, and acting upon what is shown by the evidence to be the customary trade meaning of the clause "for account of whom it may concern" in Philadelphia, and after consultation with one of the other underwriters upon the tug, he advised the petitioners that it was unnecessary to have the sale or transfer noted upon the policy.

On July 30, 1898, the tug was burned, and subsequently the petitioners and adjusters representing the Scottish Union Company, and the other underwriter, who had insured under a similar policy, agreed upon the amount of the loss. The other underwriter paid its proportion of the loss, but the Scottish

Union Company having refused to pay its share, suit was brought against it in the District Court of the United States for the Eastern District of Pennsylvania.

The policy was written upon a printed form, commonly known as the "standard policy." This form of policy is intended to be used for insurance of property on land and nearly all of the printed clauses are entirely inapplicable to the insurance of marine property.

That amongst the other *printed* conditions of said policy were the following:

"This entire policy, unless otherwise provided by agreement endorsed hereon or added hereto shall be void * * * if the interest of the assured be other than unconditional and sole ownership * * * or if any change be other than by death of an insured take place in the interest, title or possession of the subject of insurance (except changes of occupants without increase of hazard) whether by legal process, or judgment, or by voluntary act of the assured, or if this policy be assigned before a loss, etc."

The said insurance company defended said suit on the ground that under the foregoing printed conditions, the sale of the one-half interest of Martin, without notice to the company, and its consent thereto, caused the policy to be absolutely forfeited.

That after argument of said cause, before the Honorable JOHN B. MCPHERSON, Judge of said District Court, an opinion was filed by him, wherein he found as follows:

"In the present case, I have no doubt (and I find the fact to be) that Hagan intended to insure and keep insured for one year, the entire title to the boat. He did not intend merely to protect such interest as he himself might have from time to time."

The learned Judge further held that under the law, as declared by this Court in *Hooper* v. *Robinson*, 98 *U. S.*, 528, the clause for "account of whom it may concern" caused the entire interest in the tug to be insured during the life of the policy, and that the interest acquired by Martin, under the agreement, was fully covered by the policy, and that as this

written clause expressed the immediate contract of the parties, the general printed conditions, upon which the respondent relied, should give way to the deliberately chosen words.

Thereupon a decree was entered by said District Court, in accordance with the said opinion, awarding the libellants the sum of $1635.27.

That thereafter an appeal was taken by the respondents from said degree to the Circuit Court of Appeals for the Third Circuit, and after hearing therein the opinion of the said Court by DALLAS, J., was filed, reversing the decree of the said District Court and ordering that said cause should be remanded with directions to enter a decree dismissing the libel.

That said Circuit Court of Appeals, as appears by said opinion, held that the printed words of said policy of insurance were not superseded by the written words "for account of whom it may concern," and that the said written and printed clauses were not repugnant, but must be construed together.

That in reaching the conclusion that the written clause, upon which the libellants relied and the pointed words upon which the respondents relied, were not repugnant, the said Court placed a construction upon the said clause "*for account of whom it may concern*," which your petitioners are advised by counsel is in direct conflict with the construction thereof by this Honorable Court in the case of *Hooper* v. *Robinson*, 98 *U. S.*, 528, and with decisions of the appellate courts of various States.

Your petitioners further aver that the decision of said Circuit of Appeals is contrary to not only the commonly accepted meaning of said clause in the insurance business, but is also contrary to the evidence as to the established trade meaning thereof in the insurance business in Philadelphia.

Your petitioners believe that the decree of said District Court, following the law as declared by this Court in *Hooper* v. *Robinson*, *supra*, was correct, and that the Circuit Court of Appeals erred in placing a different construction upon said words, and that injustice would be done to your petitioners if said decree of the Circuit Court of Appeals should stand.

Your petitioners further aver that the said Circuit Court of Appeals held that the alienation of the one-half interest in the tug by Hagan to Martin caused the forfeiture of the entire policy, and not only a forfeiture so far as the half interest sold was concerned, thereby preventing any recovery for the loss of the half interest remaining in Hagan.

That they are advised by counsel that this decision is in conflict with the decisions of various appellate courts, holding in such cases that a transfer works a forfeiture only so far as the interest may be transferred, and that there is no forfeiture so far as the interest of the person originally assured remains.

That your petitioners are advised by counsel and verily believe, that the questions of law arising upon the record are of sufficient gravity and public importance to render it proper in the interest of jurisprudence and uniformity of decisions, that this Honorable Court should review the decree of the said Circuit Court of Appeals.

Wherefore, they pray that this Honorable Court may be pleased to grant a writ of *certiorari* in this cause, to the said Circuit Court of Appeals for the Third Circuit to bring up this case for its review and determination and for such other and further proceedings as it may direct.

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA. } *ss.* :

PETER HAGAN, being duly affirmed says that he is one of the petitioners and that the facts contained in the foregoing petition are true to the best of his knowledge, information, and belief.

Sworn to and subscribed before me this day of November, A. D. 1900.

We, John F. Lewis and Horace L. Cheyney, duly admitted to practice in the Supreme Court of the United States, hereby certify that we have examined the foregoing petition for a writ of *certiorari*, and that in our judgment from the matters stated herein the writ ought to issue.

HORACE L. CHEYNEY,
JOHN FREDERICK LEWIS,
Of Counsel.